

FILED
ELECTRONICALLY
7/27/07

STUTMAN, TREISTER & GLATT, P.C.

FRANK A. MEROLA

(CA State Bar No. 136934)

EVE H. KARASIK

(CA State Bar No. 155356)

CHRISTINE M. PAJAK

(CA State Bar No. 217173)

1901 Avenue of the Stars, 12th Floor

Los Angeles, CA 90067

Telephone: (310) 228-5600

E-mail: fmerola@stutman.com

ekarasik@stutman.com

cpajak@stutman.com

SHEA & CARLYON, LTD.

JAMES PATRICK SHEA

(Nevada State Bar No. 000405)

CANDACE C. CARLYON

(Nevada State Bar No. 002666)

SHLOMO S. SHERMAN

(Nevada State Bar No. 009688)

701 Bridger Avenue, Suite 850

Las Vegas, Nevada 89101

Telephone: (702) 471-7432

E-mail: jshea@sheacarlyon.com

ccarlyon@sheacarlyon.com

ssherman@sheacarlyon.com

*Counsel for the Official Committee of Equity Security Holders of
USA Capital First Trust Deed Fund, LLC*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:) BK-S-06-10725-LBR
USA COMMERCIAL MORTGAGE COMPANY) Chapter 11
Debtor)

In re:) BK-S-06-10726-LBR
USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
Debtor)

In re:) BK-S-06-10727-LBR
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
Debtor)

In re:) BK-S-06-10728-LBR
USA CAPITAL FIRST TRUST DEED FUND, LLC,) Chapter 11
Debtor.)

In re:) BK-S-06-10729-LBR
USA SECURITIES, LLC,) Chapter 11
Debtor.)

Affects)
☐ All Debtors)
☐ USA Commercial Mortgage Co.)
☐ USA Securities, LLC)
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed)
☒ USA Capital First Trust Deed Fund, LLC)

**NOTICE OF ENTRY OF STIPULATION AND ORDER FOR FIRST TRUST DEED
FUND EQUITY SECURITY HOLDERS COMMITTEE TO REPRESENT FIRST
TRUST DEED FUND IN "COMPLAINT FOR CONDITIONAL REVOCATION OF
CONFIRMATION ORDER UNDER 11 U.S.C. § 1144 AND RESCISSION OF ASSET
PURCHASE AGREEMENT"**

1 PLEASE TAKE NOTICE that a Stipulation and Order for First Trust Deed Fund Equity
2 Security Holders Committee to Represent First Trust Deed Fund in "Complaint For Conditional
3 Revocation Of Confirmation Order Under 11 U.S.C. § 1144 and Rescission Of Asset Purchase
4 Agreement" was entered on the 25th day of July, 2007, a true and correct copy of which is
5 attached hereto.
6

7 DATED this 27th day of July, 2007.

8 SHEA & CARLYON, LTD.

9 
10

11 CANDACE C. CARLYON, ESQ.

12 Nevada Bar No. 002666

13 SHLOMO S. SHERMAN, ESQ.

14 Nevada Bar No. 009688

15 701 Bridger Avenue, Suite 850

16 Las Vegas, NV 89101
17
18
19
20
21
22
23
24
25
26

Case: 06-10725-lbr

Doc #: 4211

Filed: 07/25/2007

Page: 1 of 6



Entered on Docket
July 25, 2007

Hon. Linda B. Riegle
United States Bankruptcy Judge

STUTMAN, TREISTER & GLATT, P.C.
FRANK A. MEROLA
(CA State Bar No. 136934)
EVE H. KARASIK
(CA State Bar No. 155356)
CHRISTINE M. PAJAK,
(CA State Bar No. 217173), Members of
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
Telephone: (310) 228-5600
Facsimile: (310) 228-5788
Email: fmerola@stutman.com
ekarasik@stutman.com
apajlen@stutman.com

Counsel for the Official Committee Of
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

SHEA & CARLYON, LTD.
JAMES PATRICK SHEA
(Nevada State Bar No. 000405)
CANDACE C. CARLYON
(Nevada State Bar No. 002666)
SHLOMO S. SHERMAN
(Nevada State Bar No. 009688)
701 Bridger, Suite 850
Las Vegas, Nevada 89101
Telephone: (702) 471-7432
Facsimile: (702) 471-7435
Email: jshea@sheacarlyon.com
ccarlyon@sheacarlyon.com
ssherman@sheacarlyon.com

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

BK-S-06-10725-LBR
Chapter 11

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

BK-S-06-10726-LBR
Chapter 11

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
Debtor.

BK-S-06-10727-LBR
Chapter 11

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

BK-S-06-10728-LBR
Chapter 11

In re:
USA SECURITIES, LLC,
Debtor.

BK-S-06-10729-LBR
Chapter 11

Affects

- ☐ All Debtors
☐ USA Commercial Mortgage Co.
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed
☒ USA First Trust Deed Fund, LLC

1 **STIPULATION AND ORDER FOR FIRST TRUST DEED FUND EQUITY SECURITY**
2 **HOLDERS COMMITTEE TO REPRESENT FIRST TRUST DEED FUND IN**
3 **COMPLAINT FOR "CONDITIONAL REVOCATION OF CONFIRMATION ORDER**
4 **UNDER 11 U.S.C. § 1144 AND RESCISSION OF ASSET PURCHASE AGREEMENT"**
5 **[AFFECTS USA CAPITAL FIRST TRUST DEED FUND]**

6 USA Capital First Trust Deed Fund, LLC ("FTDF") and The Official Committee
7 of Equity Security Holders of USA Capital Trust Deed Fund, LLC (the "FTDF COMMITTEE")
8 represent and stipulate as follows:

9 **I. BACKGROUND**

10 1. USA Commercial Mortgage Company ("USACMC") and FTDF filed
11 petitions for relief under Chapter 11 of the Bankruptcy Code on April 13, 2006. The cases are
12 jointly administered, and both of these debtors and their affiliates are jointly represented by Ray
13 Quinney & Nebeker P.C. and the Schwartzer & McPherson Law Firm.

14 2. On December 7, 2006, the above-captioned debtors and debtor in
15 possession (the "Debtors") held an auction before the Bankruptcy Court for the sale of the FTDF
16 Loan portfolio and certain asserts of USACMC. Compass Partners, LLC ("Compass") was the
17 successful purchaser at the auction (the "Compass Sale"). The sale to Compass was to be
18 approved pursuant to the "Debtor's Third Amended Joint Chapter 11 Plan of Reorganization"
19 (the "Plan").

20 3. The Court confirmed the Plan following the confirmation hearings held on
21 December 19 and 20, 2006 and entered its order confirming the Plan, including approval of the
22 Compass Sale, on January 8, 2006 (the "Confirmation Order"). The Compass Sale closed on
23 February 16, 2007, and the Effective Date of the Plan occurred on March 12, 2007.

24 4. On July 7, 2007, Compass USA SPE, LLC, Compass Financial Partners,
25 LLC, a Nevada, a limited liability corporation LLC, and Compass Financial Partners, LLC a
26 Delaware a limited liability corporation, filed their Complaint for "Conditional Revocation of
27 Confirmation Order under 11 U.S.C. § 1144 and Rescission of Asset Purchase Agreement" (the
28 "Compass Action") and named the FTDF, among others, as a defendant.

II. SCOPE OF REPRESENTATION

5. Through this stipulation, and subject to Court approval, FTDF authorizes the FTDF COMMITTEE to represent the estate of the FTDF in the Compass Action discussed above. There does not appear to be any conflict in these matters which would prevent the FTDF COMMITTEE from representing the estate of FTDF in the Compass Action.

6. Stutman, Treister & Glatt, Professional Corporation ("STUTMAN") and Shea & Carlyon ("S&C") were court-approved counsel for FTDF COMMITTEE in the bankruptcy case and authorized to represent FTDF COMMITTEE post-effective date pursuant to the Plan and applicable Court orders, including the Court's "Order Granting Second Joint Motion for Order for Implementation of Confirmed Plan" entered on March 5, 2007 (the "Second Order"). STUTMAN and S&C will represent FTDF COMMITTEE as the representative of the FTDF estate in the Compass Action, and will continue to represent the FTDF COMMITTEE in all other matters in the bankruptcy case.

III. COMPENSATION

7. FTDF proposes that STUTMAN and S&C will charge the FTDF COMMITTEE for its services in connection with the Compass Action and be compensated from the FTDF estate, subject to FTDF's right to review and object to such fees and costs in accordance with the Second Order.

IV. STIPULATED REPRESENTATION PERMITTED

8. Stipulated representation of a debtor's estate by an official committee is permissible under *Liberty Mutual Insurance Company v. Official Unsecured Creditors Committee of Spaulding Composites Co. (In re Spaulding Composites Co.)*, 207 B.R. 899, 904 (9th Cir. BAP 1997), which stated:

This case is somewhat unusual in that the setting for derivative litigation often involves a debtor-in-possession (DIP) who is hostile to proposed litigation. See e.g., *Curry*, 57 B.R. at 828; *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d at 247; *In re STN Enterprises*, 779 F.2d at 901. In that setting, the concern is that the DIP is failing to attend to litigation which it should pursue. Here, however, rather than opposing the Committee's suit, Spaulding approved of it, and Liberty argues the converse to the above — that is, Liberty argues that the Committee

1 is fostering estate litigation which should not be pursued. The
2 question, then, is whether a DIP may stipulate to
3 representation by an unsecured creditors' committee. We hold
4 that it may.

5 See also, *In re Commodore Inter. Ltd.*, 262 F.3d 96, 99-100 (2nd Cir. 2001); *In re Walnut*
6 *Leasing Co.*, 1999 WL 72967 (E.D. Pa. 1999). FTDF also relies on Bankruptcy Code
7 § 1103(c)(5), which states: "A committee appointed under section 1102 of this title may perform
8 such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). See,
9 *Official Committee of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v.*
10 *Chinery*, 330 F.3d 548, 562 (3rd Cir. 2003), *contra*, *In re Fox*, 305 B.R. 912 (10th Cir. BAP

11 2004). The defense of the FTDF by the FTDF COMMITTEE, including the prosecution of a
12 motion to dismiss or similar relief will benefit the FTDF estate and the equity security holders
13 represented by the FTDF COMMITTEE.

14 STIPULATION

15 FTDF stipulates that its estate be represented by FTDF COMMITTEE in the
16 Compass Action.

17 RAY QUINNEY & NEBEKER P.C.
18 ANNETTE JARVIS
19 STEVEN C. STRONG

20 And

21 SCHWARTZER & MCPHERSON LAW FIRM
22 LENARD E. SCHWARTZER
23 JEANETTE E. MCPHERSON

24 /s/ Steven C. Strong
25 STEVEN C. STRONG
26 38 South State Street
27 Suite 1400
28 Salt Lake City Utah, 84111
Counsel for USA Capital First Trust
Deed Fund, LLC

1 STUTMAN, TREISTER & GLATT, P.C.

2 /s/ Eve H. Karasik

3 EVE H. KARASIK

4 CHRISTINE M. PAJAK

5 1901 Avenue of the Stars, 12th Floor

6 Los Angeles, CA 90067

7 Counsel for the Official Committee of Equity

8 Security Holders of USA Capital First Trust Deed,
9 Fund, LLC

10 OFFICE OF THE UNITED STATES TRUSTEE

11 August B. Landis, Esq.

12 Assistant United States Trustee

13 **ORDER**

14 IT IS SO ORDERED.

15 ###

1 STUTMAN, TREISTER & GLATT, P.C.

2
3 EVE H. KARASIK

4 CHRISTINE M. PAJAK

5 1901 Avenue of the Stars, 12th Floor

6 Los Angeles, CA 90067

7 Counsel for the Official Committee of Equity

8 Security Holders of USA Capital First Trust Deed,

9 Fund, LLC

10 REVIEWED

11 OFFICE OF THE UNITED STATES TRUSTEE

12
13  AUGUST E. LANDIS

14 Assistant United States Trustee

15 ORDER

16 IT IS SO ORDERED.

17 ###